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Mid City Parking, Inc. and Teamsters Local 727. Case 13–CA–257439

July 20, 2021

ORDER GRANTING MOTION¹

BY MEMBERS KAPLAN, EMANUEL, AND RING

On April 8, 2021, the National Labor Relations Board issued a Decision and Order in this no-answer default judgment proceeding.² The Board found that Mid City Parking, Inc. (the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act by (1) discontinuing operations without first bargaining over the effects of its decision to close, (2) failing and refusing to provide the Union with relevant and necessary information, and (3) failing to continue in effect all terms and conditions of the parties' collective-bargaining agreement, including by failing to make payments to union-sponsored health and welfare, pension, and legal and educational assistance funds. The Board ordered the Respondent, as relevant here, to pay the union trust funds the amounts specified in the compliance specification plus interest, to cease and desist from refusing to bargain in good faith by "failing and refusing to bargain over the effects of its decision to close," and to post and distribute a remedial notice. The Board did not, however, affirmatively order the Respondent to bargain, upon request, over the effects of its decision to close.

On June 22, 2021, the Acting General Counsel filed with the Board a motion to clarify the Board's April 8, 2021 Order. The Acting General Counsel asks the Board to modify the remedy to require the Respondent to pay the union trust funds the amounts specified in the compliance specification plus any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).³ The Acting General Counsel also asks that the Board affirmatively order the Respondent to bargain, upon request, over the effects of its decision to close.

The Acting General Counsel's requested modifications to the remedy and Order are consistent with the Board's

customary remedies in cases involving a respondent employer's failure to make contractually required contributions to union trust funds or engage in effects bargaining. The Board's prior failure to provide these remedies was inadvertent. Therefore, we shall grant the motion and modify the Order accordingly.

ORDER

The Acting General Counsel's motion for clarification is granted. Accordingly, the Board's Order in the underlying decision (370 NLRB No. 105) is modified, and the Respondent, Mid City Parking, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall take the actions specified in the Order as modified.

1. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

"On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees over the effects of the decision to close its Chicago facilities, and reduce to writing and sign any agreement reached as a result of such bargaining."

2. Substitute the following for paragraph 2(f) (as relettered, 2(g)).

"Remit to the Union's Health and Welfare Fund, Pension Fund, and Legal and Educational Assistance Fund the amounts shown opposite their names in the Attachment, plus any additional amounts due to the funds on behalf of unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979)."

3. Substitute the attached notice for that appended to the Decision and Order issued in the instant case on April 8, 2021.

Dated, Washington, D.C. July 20, 2021

Marvin E. Kaplan, Member

William J. Emanuel, Member

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² 370 NLRB No. 105.

³ In *Merryweather Optical*, the Board explained that "[b]ecause the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments," but rather, defers "the question of whether [a r]espondent must pay any additional amounts into the benefit funds in order to satisfy

[a] 'make-whole' remedy" to the compliance stage. 240 NLRB at 1216 fn. 7. The additional amounts are "determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue" or, "where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses." Ibid.

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Teamsters Local 727 (the Union) as the exclusive collective-bargaining representative of our employees in the following unit, by failing and refusing to bargain over the effects of our decision to close:

Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors[,] customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining work.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT cease to make contributions to the Union's Health and Welfare Fund, Pension Fund, and Legal and Educational Assistance Fund as required by the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees over the effects of our decision to close our Chicago facilities and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL make whole our employees Marcelo Barbieri, Thomas Barnes, Kevin Chapman, Dariel D'Ottone, Bernadino Echeverria, Roger Eshun, George Georgiev, Antonio Harper, Jullian Heccervera, Emerterio Herrera, Florencio Jimenez, Shawn Kerber, Maciek Kozoil, Vicente Lagunas, Jr., John Carlo Luistro, Carlos Martinez, Temica McKenzie, John McKenzie, Phillip Mensah, Drew Moore, Ilian Nenchev, Hugo Roman, Rene Roman, Angel Valverde, and Kobe (last name unknown) for any loss of earnings and other benefits suffered as a result of our unlawful conduct, by paying them the amounts set forth in the Decision and Order of the National Labor Relations Board, plus interest and minus tax withholdings required by Federal and State laws.

WE WILL pay our unit employees further limited backpay, plus interest, in connection with our failure to bargain over the effects of our decision to close, as required by the Board's Order.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 13, within 21 days of the date of the Board's Order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 13 copies of your W-2 forms reflecting the backpay awards.

WE WILL furnish to the Union in a timely manner the information requested by the Union on March 4, 2020.

WE WILL remit to the Union's Health and Welfare Fund, Pension Fund, and Legal and Educational Assistance Fund the amounts set forth in the Board's Order, plus any additional amounts due to the funds.

WE WILL make whole, with interest, our unit employees for any expenses they incurred as a result of our failure to make contributions to the funds.

MID CITY PARKING, INC.

The Board's decision can be found at www.nlr.gov/case/13-CA-257439 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor

Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

